

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TIMOTHY RICHARDSON	:	CIVIL ACTION
	:	
v.	:	
	:	
HARRY E. WILSON, et al.	:	No. 06-464

ORDER

AND NOW, this 29th day of November, 2006, upon consideration of the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241(c)(3) (docket entry # 2), the response opposing that petition (docket entry # 8), the Report and Recommendation of the Honorable Linda K. Caracappa (docket entry # 11), and petitioner's failure to object within ten days of service of the Report and Recommendation, as required by 28 U.S.C. § 636(b)(1), and the Court finding that

(a) Richardson challenges the use of 42 Pa. C.S.A. § 9714 to enhance his sentence;

(b) Because Richardson remains in state custody and claims that his custody, as opposed to the conditions of his confinement, is unlawful, such a challenge could have been brought under 28 U.S.C. § 2254(a);

(c) A petitioner may not evade the procedural restrictions Congress has placed on petitions under Section 2254 by instead filing his claim under 28 U.S.C. § 2241, Coady v. Vaughn, 251 F.3d 480, 484-86 (3d Cir. 2001);

(d) We agree with Magistrate Judge Caracappa that this petition must therefore be treated as having been brought under Section 2254;

(e) 28 U.S.C. § 2244(d) imposes a strict one-year limitation from the date a judgment becomes final on the filing of claims under Section 2254;

(f) As Judge Caracappa found, Richardson's conviction became final on March 19, 1999;

(g) Although the statute of limitations his claim would have been tolled during the pendency of a timely state court petition for post-conviction relief, Richardson did not file any petition in any court until August 13, 2004, long after the statute of limitations had run on his Section 2254 claim;<sup>1</sup>

(h) We will, therefore, adopt Judge Caracappa's Report and Recommendation and deny Richardson's petition;

It is hereby ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED;
  2. The § 2254 petition is DENIED;
  3. The Clerk shall CLOSE this matter statistically;
- and

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<sup>1</sup> Because the statute of limitations had already run when petitioner filed his state claim, we need not address the question of whether it was timely.

4. Petitioner having failed to make a substantial showing of the deprivation of a constitutional right, we DECLINE to issue a certificate of appealability.

BY THE COURT:

/s/ Stewart Dalzell, J.